

Mediation and Due Process Hearing Procedures

Formal procedures for counselor or coordinator determinations are based on the Rehabilitation Act and Amendments effective August of 1998. Following are the steps to the due process procedures for South Dakota Division Service to the Blind and Visually Impaired (SBVI).

Informal Review Procedures

An informal process is established for the purpose of reviewing determinations in conjunction with or prior to formal mediation and due procedures if the individual chooses. This process allows for resolution in a timely fashion and may alleviate the necessity of a fair hearing. The informal process consists of procedures for review of the counselor or coordinator's decision by the Manager of Field Services or the immediate supervisor.

The informal review will not delay the formal mediation or due process hearing unless agreed upon by both parties in which case the time extension will be specified. If the decision from the informal review process is not satisfactory to the individual requesting the review; procedures will continue to conduct a fair hearing within 45 days of the individual's initial request for review of the counselor or coordinator's decision. The individual may request mediation at any point in the formal review process at which time an impartial qualified mediator will be provided with costs covered by SBVI.

Mediation Procedures

Mediation procedures have been established to allow applicants, and eligible individuals, or when appropriate, their designees, to resolve disputes regarding determinations made by vocational rehabilitation counselors or other personnel of SBVI, whenever a decision is disputed. Mediation is available at any point during the dispute.

- * Mediation must be voluntary on the part of all parties in the dispute.
- * Mediation will not delay the right of an individual to an impartial informal review or fair hearing.
- * Mediation will not be used to deny any other right afforded to the individual under Title I of the Rehabilitation Act.
- * IPE services will not be suspended, reduced or terminated for pending appeals or mediation procedures unless the individual or their representative, if appropriate, requests or there is evidence of services having been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.
- * Mediation will be conducted by impartial mediators trained in effective mediation techniques through the SD Office of Special Education.
- * Fees for Mediation services will be paid by SBVI.

Formal Hearing Procedures

- * An impartial hearing officer will be chosen from among a State pool of persons qualified to be impartial hearing officers. The hearing officer will not be an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education); is not an SBVI Board member or an employee of the agency and meets all requirements in CFR 361.5 (22).

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- * The hearing will be scheduled within 45 days of the individual's written request for review of the counselor's decision unless the individual and state agency representative agree on a time extension which will be specifically documented.
 - * IPE services will not be suspended, reduced or terminated for pending appeals procedures unless the individual or their representative, if appropriate, requests or there is evidence of services having been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.
 - * The individual or their representative (when appropriate) may present additional evidence, information and witnesses to the impartial hearing officer.
 - * The individual may be represented by counsel or other appropriate advocate(s), and will be afforded an opportunity to examine all witnesses and other sources of relevant information or evidence.
 - * Within 30 days of the hearing, the impartial hearing officer will provide a full written report of findings to the individual (or designee if appropriate) and the Secretary of the Department of Human Services (DHS) which is the Designated State Agency.
 - * The DHS Secretary will respond in writing to the individual (or individual's representative) within 20 days of the mailing of the impartial hearing officer's decision of intent to review the decision. If the DHS Secretary does not respond to the hearing officer's decision within 20 days, the hearing officer's decision is final.
 - * If the DHS Secretary decides to review the decision of the impartial hearing officer, the individual or their representative will be provided an opportunity to submit additional evidence and information relevant to the final decision.
 - * SBVI policy provides, for the DHS Secretary's overturning of the impartial hearing officer's decision only when there is clear and convincing evidence that the decision is contrary to the approved State plan, the Rehabilitation Act, Federal vocational rehabilitation regulations or agency policies which are in line with Federal requirements. The standards of review by which the Secretary will operate in order to exercise the right to review the hearing officer's decision will be based on the Department Secretary determining that at least one of the following criteria have been abridged:
 - 1.) The initial decision is arbitrary, capricious, an abuse of discretion or otherwise unreasonable;
 - 2.) The initial decision is supported by substantial evidence, i.e., consistent with facts and applicable State and Federal policies;
 - 3.) In reaching the decision, has the hearing officer given appropriate and adequate interpretation to such factors as:
 - a. Federal statute and regulations as they apply to the specific issue?
 - b. The State Plan as it applies to the specific issue in question?
 - c. State procedures manual as applied to the issue in question?
 - d. Key portions of conflicting testimony?
 - e. State agency options in the delivery of service if such options are permissible by Federal statute or regulations?
 - f. Restrictions in the Federal statutes or regulations with regard to such supportive services as maintenance and transportation?
 - g. Approved Federal or State agency policy as it relates to the issue in question?

The review of the hearing officer's decision will be limited to findings with which the Department Secretary took issue. The Secretary of the Department of Human Services will provide a full written report of the decision together with the basis of the decision to the individual or the

designee within 30 days of providing the notice of intent to review the impartial hearing officer's decision. The responsibility for the final decision by the Department Secretary will not be delegated to any other individual.

Informing Individuals of Their Rights

- * All individuals wishing to apply for services, those found eligible and/or those found ineligible are informed of their right to review, including the manner in which an informal review or fair hearing may be initiated.
- * All individuals wishing to apply for services, those found eligible and/or those found ineligible are informed of their right to mediation as a part of the review process.
- * The Client Assistance Program (CAP) description, address and phone number are provided throughout the rehabilitation process. The minimum requirement for notification of rights and CAP are beginning at application, again at the time of eligibility determination, when the IPE is initiated and at closure. If for any reason there is a reduction, suspension, or cessation of vocational rehabilitation services, the individual is to be informed, in writing, of their rights and the availability of assistance through the Client Assistance Program.

All correspondence is provided in the individual's preferred format. This is to be documented in the case file. When appropriate, the individual's designee will be given information on rights, mediation and due process procedures. If necessary, interpreters for the deaf or of foreign languages and Native American dialects will be hired by SBVI to deliver information to ensure it is thoroughly understood.